IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 7467 OF 2003

ALL INDIA TRAVEL SERVICES .. PETITIONERS

Vs.

M/s. JAMNAGAR INVESTMENT
CO. LTD. & ORS. ... RESPONDENTS

Mr. A. G. Damle for petitioners

Mr. P. K. Dhakephalkar for respondents

CORAM:-SMT. RANJANA DESAI, J.

DATED:-26/4/2005

P.C.

1. In this writ petition original defendant No. 3 has challenged order dated 9/10/03 passed by the Small Causes Court at Mumbai on Interim Notice No. 1692 of 2001 in R A E Suit No. 367/1471 of 1978. By the impugned order the trial court has made the notice taken out by the plaintiffs for amendment of the plaint absolute on payment of cost to the defendants.
2. I have heard Mr. Damle, learned counsel for the petitioners. He contended

that by way of this amendment the plaintiffs inter alia want to bring on record that original defendant 1 had before his death illegally and wrongfully sublet the suit premises or major portion thereof to defendant 3 and defendant 1 thereby parted with the possession of the suit premises or major portion thereof in favour of defendant 3 in July 1966 apparently on the basis of leave and licence agreement but as a matter of fact and by way of unlawful subletting. Mr. Damle contended that initially the case of the plaintiff was that defendant 1 had sublet the suit premises to defendant 2. However, by this amendment a new story is sought to be introduced. He submitted that the plaintiffs have amended the plaint earlier on three occasions i.e. on 29/3/78, 4/8/89 and 6/9/2000.

3. The learned counsel pointed out that the plaintiffs have stated that these facts came to their knowledge in the year 1999. Defendant 3 was added to the suit on 6/9/2000. The plaintiffs should have, therefore, brought these facts on record at that time. Mr. Damle contended that after observing that the defendants are right in objecting to the amendment on the ground that they would be prejudiced if it is granted and that valuable right accrued in favour of the defendants is likely to be defeated it was wrong on the part of the trial court to grant the amendment. Mr. Damle relied on **Sampath Kumar v. Ayyakannu & Anr. 2002(4) ALL MR 866 (SC.)**

4. There is some substance in Mr. Damle's submission. However, in the facts of the case, I would not like to disturb the order granting amendment. The defendants will have to be protected by keeping all points, including the point regarding limitation open. It is also necessary to refer to the following observations of the Supreme Court in **Sampath Kumar's case (supra):**

> "An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed."

5. While dealing with the suit, the trial court shall keep the above observations of the Supreme Court in mind.

6. All contentions of the parties are kept open. Needless to say that the defendants will be at liberty to file additional written statement. Suit is expedited. The writ petition is disposed of in the aforestated terms.

7. Certified copy expedited.